

Furthermore, 19 CFR p 301.5(e)(7) provides, in part, as follows:

Information provided in a resubmission that \* \* \* contradicts or conflicts with information provided in a prior submission, or is not a reasonable extension of the information contained in the prior submission, shall not be considered in making the decision on an application that has been resubmitted. Accordingly, an applicant may elect to reinforce an original submission by elaborating in the resubmission on the description of the purposes contained in a prior submission and may supply additional examples, documentation and/or other clarifying detail, but the applicant shall not introduce new purposes or other material changes in the nature of the original application (emphasis added).

Consequently, in view of the applicant's own admission that the domestic instrument is capable of meeting its requirements, we conclude that a resubmission cannot establish, without introducing impermissible new purposes, that a scientifically equivalent domestic instrument is not available.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### University of Maryland, Baltimore; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

**Docket Number:** 98-051. **Applicant:** University of Maryland, Baltimore, Baltimore, MD 21201. **Instrument:** Data Acquisition and Analysis Workstation, Model ORA 2001. **Manufacturer:** Optical Imaging Europe GmbH. **Intended Use:** See notice at 63 FR 59283, November 3, 1998.

**Comments:** None received. **Decision:** Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. **Reasons:** The foreign instrument provides an integrated hardware and software package designed for optical

imaging of intrinsic cortical signals based on a cooled CCD frame-transfer camera. The National Institutes of Health advises in its memorandum of December 11, 1998 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 010599B]

#### Small Takes of Marine Mammals Incidental to Specified Activities; Seismic Retrofit of the Richmond-San Rafael Bridge, San Francisco Bay, CA

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

**SUMMARY:** NMFS has received a request from the California Department of Transportation (CALTRANS) for renewal of an authorization to take small numbers of Pacific harbor seals and possibly California sea lions by harassment incidental to seismic retrofit construction of the Richmond-San Rafael Bridge, San Francisco Bay, CA (the Bridge). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to reauthorize CALTRANS to incidentally take, by harassment, small numbers of marine mammals in the above mentioned area for a period of 1 year.

**DATES:** Comments and information must be received no later than March 18, 1999.

**ADDRESSES:** Comments on the application should be addressed to the Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225. A copy of the application, an Environmental Assessment (EA) and a list of references cited in this document may be obtained by writing to

this address or by telephoning one of the contacts listed here.

#### FOR FURTHER INFORMATION CONTACT:

Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713-2055, or Irma Lagomarsino, Southwest Regional Office, NMFS, (562) 980-4016.

#### SUPPLEMENTARY INFORMATION:

#### Background

Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA now defines "harassment" as:

...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.